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CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; Does 1 through 100, inclusive, Defendants.	CASE NO. 157 680 REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER COMPELLING COMPLIANCE WITH COURT ORDER AND FOR SANCTIONS FROM MICHAEL AND SOLINA WALTON [C.C.P. § 2031(M)] DATE: April 6, 1995 TIME: 11:00 a.m. DEPT: DISCOVERY REFEREE William R. Benz TRIAL DATE: May 18, 1995

I. INTRODUCTION

Defendants Michael and Solina Walton ("the Walton defendants") have interposed an opposition to plaintiff's moving papers which is both frivolous and offered in bad faith. The opposition itself thus supports and compounds plaintiff's initial request for sanctions. They have resisted ordinary and necessary discovery in this action for more than 6 months, required plaintiff to bring multiple motions, and refused to comply with Judge Thomas's order. Enough is enough. The Waltons should be required to admit plaintiff's appraiser at plaintiff's convenience, and should be sanctioned.

II.

THE OBJECTIONS RAISED BY THE WALTONS ARE FRIVOLOUS

A. Inspection Of The Property Was Ordered By The Court In December, 1994

The Waltons argue first that when, on December 16, 1994, Judge Thomas granted plaintiff's motion to complete discovery by inspecting the Fawn Drive property and taking Ms. Walton's deposition, he did not "really" order the inspection as requested by plaintiff. This unsupported argument is without merit. The moving papers plainly made a motion which asked for the inspection of the house; the Waltons resisted that portion of the motion on its merits. Indeed, the Waltons stated in their papers opposing the motion that one of the issues which the Court would have to decide was, **"Should [the Church] be allowed to inspect the residence of Solina and Michael Walton?"** [Ex. B to Moving Papers, emphasis supplied] The Court ordered that the motion was granted. The Walton defendants' claim that the Court did not rule against them on this issue is thus belied not simply by

plaintiff's moving papers, but by the Walton defendant's own opposition papers. See Exhibits A, B, and C to the Moving Papers.

B. Plaintiff's Motion Is Both Proper And Timely

Next, the Walton defendants argue, in a confused fashion, that the plaintiff has "waived its right to compel any further response." (Oppo. at 4) This argument, too, is meritless, particularly when one considers that the Walton defendants have deliberately interposed delay after delay into what should be a simple and routine discovery request. In fact, plaintiff Church has been attempting to inspect the Fawn Drive property since **September, 1994**. When the Walton defendants objected to the inspection, and refused to meet and confer, claiming that discovery was over, plaintiff was forced, in November, 1994, to bring a motion to extend the discovery cut-off and compel the inspection. This was granted by the Court on December 16, 1994. The Walton defendants did not object to the Court's ruling, and did not request oral argument. When Ms. Bartilson asked the Walton defendants that to work with her to schedule the court-ordered inspection of the Fawn Drive property [Ex. C to Moving Papers], the only response which she received was silence. Accordingly, she chose a date for the Court-ordered inspection, and renoticed it [Ex. D to Moving Papers.]

On December 20, 1995, the Waltons responded by objecting to the Court-ordered inspection, stating that "absent a ruling from Mr. Benz, no representative from Scientology will be permitted in our home." [Ex. E to Moving Papers.]

In short, we are here before the Referee because the Walton

defendants have chosen to ignore a clear order from Judge Thomas, and have insisted in their own arbitrary fashion that plaintiff cannot take the discovery which the Court ordered without a duplicative order from Mr. Benz. They are not entitled to have an order of the Court reconsidered by the Referee.[1]

The Referee may, however, in accordance with his appointed powers, recommend that the Walton defendants be sanctioned in accordance with Code of Civil Procedure Section 2023(a)(4),(7) for their wilful failure to respond to an authorized method of discovery, and their wilful disobedience of a court order to provide discovery.

C. The Walton Defendants May Not Reargue The Merits Of The Ordered Inspection

Finally, the Walton defendants repeat their arguments, already considered and denied by Judge Thomas, that the requested discovery is not relevant. However, the Walton defendants may not ask the discovery referee to reconsider a determination already made, four months ago, by the sitting trial judge. C.C.P. 1008. In fact, the arguments made by the Walton defendants here are, word for word, nearly identical to the arguments which were rejected by Judge Thomas. [Compare, Oppo. at 5-6 with Exhibit B to Moving Papers at 4-5.]

Even if the Referee were to reconsider the Court's ruling on the merits of the requested inspection, the Walton defendants'

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[1] The Walton defendants' insistence that the plaintiff has "ignored" the discovery cut-off is equally frivolous. Plaintiff has been attempting to have defendants comply with this simple discovery request for more than six months. Moreover, with the trial date of May 18, 1995, discovery motions may be heard until May 3, 1995. C.C.P. 2024(a).

claim that the inspection of the Fawn Drive property is not relevant is frivolous. Michael Walton, an attorney, claims that defendant Gerald Armstrong, purportedly Walton's client, gave him the property, in 1990, as payment of attorney's fees. Defendant Armstrong claims that he gave Walton the property as a gift, because he was commanded to do so by God. The Church, which now has a judgment of at least $100,000 against Armstrong, claims that Armstrong gave the house and other property to Walton in an effort to render himself "judgment proof." Since Armstrong is, as was to be expected, claiming that he is presently indigent, there is no question that the fraudulent conveyance aspect of this case will, indeed, proceed to trial on the merits.[2] The value of the Walton's property is plainly relevant to the credibility of the Walton defendants' defense that Armstrong received a reasonably equivalent value in legal services from Walton in exchange for the property. Plaintiff's appraiser will certainly be able to provide the Court with a reasonable estimate of the property's 1990 value, based on a current appraisal of the property, coupled with the evidence which the defendants have provided concerning any changes that they made to the property in the last five years.[3] Under these circumstances, the requested property inspection is plainly necessary for plaintiff to establish its prima facie case, and to rebut the Walton defendants' defense.

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[2] Two of twenty claims have already been adjudicated against Armstrong, for a present judgment of $100,000.

[3]Both Waltons have testified that they have no past or current appraisals of the property which they could make available to either the plaintiff or the Court.

III.

CONCLUSION

The Walton defendants have compounded their error of inexcusably refusing to comply with Judge Thomas' order compelling them to permit plaintiff to inspect the property at 707 Fawn Drive by frivolously opposing plaintiff's instant motion. They must be ordered to permit inspection of the property by the Church's appraiser at a time and date convenient to the Church, and ordered to pay the Church its costs and fees in bringing this motion of $ 600.00.

Dated: April 4, 1995

Respectfully submitted,

MOXON & BARTILSON

BY: _____
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for PLAINTIFF
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On April 4, 1995, I caused the attached copy of **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER COMPELLING COMPLIANCE WITH COURT ORDER AND FOR SANCTIONS FROM MICHAEL AND SOLINA WALTON** on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

William Benz
900 Larkspur Landing Circle, #185
Larkspur, CA

Michael Walton
700 Larkspur Landing Circle, #120
Larkspur, CA 94939

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on April 4, 1995.

Lenore Matthews
LENORE R. MATTHEWS

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Hand Delivery